

STATE AND FEDERAL

# MILK MARKETING ORDERS

IN CINCINNATI AND TOLEDO, OHIO



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# STATE AND FEDERAL MILK MARKETING ORDERS IN CINCINNATI AND TOLEDO, OHIO

C. G. McBRIDE

## INTRODUCTION

One of the most significant developments in milk marketing in the past 20 years has been the widespread introduction of government economic controls at both State and Federal levels. State and Federal laws and regulations designed to make milk safe for human consumption were widely prevalent previous to this period. Economic controls came with the collapse of milk prices and resultant market chaos in the early thirties.

The economic control measures to be discussed in this bulletin deal with market practices such as classification of milk on the basis of its use, the pricing of the various classes, the method of payment to producers for milk delivered, the territory to be included as a marketing area, and division of responsibility among the various agencies in the market.

In the absence of governmental control, administration of these marketing practices fell entirely upon producers, distributors, and other agencies, either as individuals or in organizations. Under government controls, certain administrative responsibilities are assumed by the government control agency. In this study greatest emphasis has been placed upon the evaluation of the market control program. An attempt has been made to contrast the objectives of State control in Ohio with those of Federal control. Considerable attention has been given to the division of responsibilities among the parties involved in the program.

In the course of the study, much data was accumulated on the detail of changes in market practices which must be omitted to conserve space. The reader who is interested in those details with respect to Federal control will find them in printed copies of the market orders and in the files of the bulletins published by the market administrator.

The specific legislative enactment under which economic control of milk marketing was undertaken in Ohio was the Burk Act passed by the legislature in June, 1933. Section 2 of the bill declared the production, processing, distribution, and sale of milk in this State as a whole, and each of said activities or operations, separately, to be business charged with a public interest.

At the Federal level, the control program was initiated under the Agricultural Adjustment Act passed by Congress in 1933. The controls were later

put into more specific terms by the Agricultural Marketing Agreement Act, passed in 1937. This legislation resulted in the establishment first of licenses and later of marketing agreements or orders in a number of cities throughout the nation.

Cincinnati and Toledo were chosen as typical city markets in Ohio for this study of milk marketing under economic regulation. Both markets operated in 1934 and 1935 with State orders under the provisions of the Burk Act. They were the first markets in Ohio to be established as Federal markets under the Agricultural Marketing Agreement Act of 1937. Two cities were chosen in order to show the contrasts in marketing conditions and in the specific provisions of the orders.

A brief background is given to cover the period preceding the enactment of the Burk Act in 1933. The significant features of operation under the Burk Act are then discussed, followed by a description of the interim period between the Burk Act and the Federal orders. The last and most extensive phase of the study deals with operation of the markets under Federal orders from 1938 to 1947, inclusive.

The emphasis throughout the study has been upon economic and legal aspects of market control rather than upon the technical details of weighing, testing, and accounting. Over the past 25 years these two markets provide illustrations of many different types of producer and dealer organization as well as control by State and Federal governments and by industry itself.

Sources of data were records of producer and distributor associations, testimony and briefs presented in State and Federal milk hearings and interviews with cooperative leaders, dealers, and market administrators. The interviews were an important part of the study because these leaders in the field of milk marketing recognized that the industry has been passing through a period of rapid change. They were cooperative and willing to express themselves frankly as to the strong and weak points in the various types of market control.

## TERMINOLOGY

In order to avoid confusion on the part of the reader, a brief statement regarding terminology is needed. Under the Burk Act those engaged in the distribution and sale of milk were divided into three groups as follows: "Distributor" included all persons who purchased, accepted, or received milk for the purpose of putting such milk into bottles or other unit containers in which the same was designed to be sold, or for the purpose of cooling, pasteurizing, standardizing, or otherwise processing such milk, or for the purpose of selling, jobbing, or distributing such milk at wholesale or retail, or for any two or more such purposes. "Producer-distributor"

included all persons owning or managing and controlling a dairy herd or herds who put only the milk produced therefrom in bottles or other unit containers in which the same was designed to be sold, or cooled, pasteurized, standardized, or otherwise processed such milk for the purpose of selling or distributing the same at wholesale or retail, or who sold or distributed such milk at wholesale or retail. "Distributing broker" included all persons who on their own account accepted or received milk from a distributor or producer-distributor for sale or distribution at wholesale or retail. "Milk dealer" under the Burk Act included the three just defined and also the retail store from which milk was sold. "Producer" included all persons owning or managing or controlling a dairy herd or herds, excepting those defined as producer-distributor.

Those who were defined as distributors and distributing brokers under the Burk Act are designated as "handlers" in the Federal orders. The term "producer" means any person who produces milk which is received at the plant of a handler from which milk is disposed of in the marketing area.

### HISTORICAL BACKGROUND — CINCINNATI

Because of the important roles of both organized producers and organized distributors or handlers in markets operating under marketing orders, it is essential to have something of a picture of this organization background.

Producer organization in the Cincinnati market dates back to 1906 when about 600 producers formed the Tri-State Milk Company. This venture failed. A second try at cooperative marketing was made by the Hamilton County Milk Producers Association organized in 1910. This also was short-lived.

Distributor organization made its appearance at about the same time as that of the producers. About 1909 the Cincinnati Milk Exchange was formed. In 1916 it affiliated with the Cincinnati Chamber of Commerce and became the Milk Exchange of the Cincinnati Chamber of Commerce. This organization is still in existence although at present its activities are limited. A second organization to serve dealers, The Mutual Bottle Exchange, was organized on September 20, 1926. On April 10, 1943 this organization was succeeded by the Universal Milk Bottle Exchange which is in operation at the present time.

The producer organization which first made a record of success and continuing operation began in 1915 with the Queen City Milk Producer's Association. In 1921 it was reorganized with 2,350 members as the Tri-State Cooperative Milk Marketing Association. Because of the presence in Cincinnati of the Tri-State Butter Company and the threat of litigation

regarding the name the association incorporation papers were changed to make it the Cooperative Pure Milk Association.

The Cooperative Pure Milk Association started with the objective of going into wholesale and retail distribution. At the time of joining each member signed a note in an amount equivalent to 20 dollars for each dairy cow he owned. These notes were used as security for loans to obtain the initial capital. Distributing operations were started January 1, 1923 from a small plant in Covington, Kentucky. Soon after this a small concern in Cincinnati with seven delivery routes was taken over.

Soon after the Cooperative Pure Milk Association began operating, French Bros-Bauer, the largest distributing firm in the city, offered to buy its supply from the cooperative. Because of this action, French Bros-Bauer was asked to resign from the Cincinnati Milk Exchange. When it became evident that the Cooperative Pure Milk Association was determined to expand its wholesale and retail distribution French Bros-Bauer offered to sell its plants and business to the cooperative. The offer was accepted. It was decided that the distributing company to be known as French-Bauer Inc. would be kept intact and operated as a subsidiary of the Cooperative Pure Milk Association.

This new arrangement brought about a tense competitive situation in the market between the new combination and the Cincinnati Milk Exchange. The struggle was carried into the country with the result that a new producer cooperative was formed. It was incorporated in October 1924 under the name of The Kentucky, Indiana, Ohio Milk Producers Association and generally is known as the K.I.O. In the beginning, friendly working relationships existed between the K.I.O. and the Milk Exchange. In the first few years of this alignment in the market there were some bitter controversies resulting in litigation. This cleared up eventually and the market moved along on a fairly even keel until the extreme break in farm prices came in 1930. The K.I.O. association was reorganized in September, 1935 and incorporated under the Ohio Cooperative Law, Section 10186.

Milk prices reached extremely low levels during 1932 and 1933. With lower producer prices there developed discontent within producer organizations. As a result of this there came into existence another cooperative bargaining association called The Milk Producers Union. It was incorporated in January, 1933 under the Ohio Cooperative Marketing Act, Section 10186 of the Ohio General Code.

Along with the unsettled situation with respect to producer organization, there was also a badly disturbed competitive situation in the city. The market from 1929 to 1933 was unsatisfactory to producers, and probably

equally unsatisfactory to most distributors. The base plan was about the only example of uniformity. It was accepted by all the dealers, according to their own individual interpretation of its meaning. At this time it was said no dealer could know what his competitor was paying for milk because the quoted prices were for base and excess, not based on sales. Without a plan of use classification, and auditing, dealers were paying vastly different prices for milk going into the same use. A net decline in the return to farmers for milk continued until 1932 when the average return for base milk was approximately \$1.40 per hundred at the dealer's platform.

This is a condensed picture of the market situation in and around Cincinnati preceding the passage of the Burk Act. There was both producer and distributor organization. In producer cooperative marketing, two types of organization had appeared. In the Cooperative Pure Milk Association the market had one of the largest operations in the entire country in producer-owned distributing facilities. The remainder of the market was being served by two well-organized collective bargaining cooperatives. The Kentucky, Indiana, Ohio Milk Producers Association and The Milk Producer's Union. Producer prices were at a low level in 1933 and there was an unstable situation both with respect to prices and marketing practices in the city.

#### HISTORICAL BACKGROUND — TOLEDO

Producer organization in this area got under way in the winter of 1920-1921. The initial activity was around the town of Wauseon in Fulton County. The members signed were, for the most part, selling milk to evaporating plants in the counties of northwestern Ohio. The organization was called the Northwestern Cooperative Sales Company. The urge for organization appears to have come from dissatisfaction with prices, weights, and butterfat tests of milk delivered.

It was decided that to be effective the organization must include the entire Toledo milkshed. At this time about 65 percent of the Toledo fluid supply was coming from nearby Michigan counties. The cooperative was, therefore, interstate in character.

The Northwestern Cooperative Sales Company was incorporated before the present Ohio Cooperative Law was enacted. It was a stock company, capitalized at \$50,000 of common stock with 5-dollar shares. Something over \$25,000 of this stock was sold.

In June, 1932 the Northwestern Cooperative Sales Company was reorganized under the Ohio Cooperative Law and became the non-stock Northwestern Cooperative Sales Association. The office was then located at Wauseon, but in June, 1932 the charter was amended to locate the office in

Toledo. The by-laws provided for a membership fee of \$2.50 and all members were required to sign a marketing agreement.

The newly organized association undertook to strengthen its bargaining with the milk distributors of Toledo. Difficulty ensued and within the first year a milk strike was called and members held their milk off the market for several days. The outcome was not decisive and as a result the prestige of the association as bargaining agent for those of its members selling in the Toledo market suffered. For several years following the strike the greatest accomplishment of the association was in the handling of cream through its stations and the sale of milk to evaporating plants.

In 1935 the Association owned nine cream stations at which farm separated cream was weighed, tested, and resold to processors. A more extensive program was in operation with buyers of milk for manufacture. For this marketing service a deduction was made from the member's milk check. It ranged from 1 cent to 3 cents, depending upon the amount of service rendered. At this time only four distributors in the city of Toledo were buying through the association and making the required deductions.

In January, 1935 a rival organization appeared in the market. It was incorporated as the Toledo Fluid Milk Producers Association. There was no membership fee and deductions were one-half cent per hundred pounds. It was provided that the members should give the dealer to whom he was selling 2 weeks notice of intention to discontinue shipping. The same provision applied to a dealer who wished to drop a producer. A member could resign from the association at any time by writing a letter to the secretary and his resignation became effective upon receipt of the letter.

Distributor organization did not appear in the Toledo market until 1933. Early in this year a committee appointed by the Governor was investigating the dairy marketing situation. New legislation, to be described later in the bulletin, was being formulated. It is significant to note that the organizers of the Toledo Milk Distributors Association gave this activity with respect to milk control legislation as the incentive which brought on the organization.

The Toledo distributors acted through this association in all deliberations preparatory to operation of the market under the Burk Act and during its operation. There were negotiations with both of the producer organizations in the market at this time. It appeared, however, that the Toledo Fluid Milk Distributors Association was more friendly to the Toledo Fluid Milk Producers Association than to the Northwestern Co-operative Sales Association.

After the Burk Act expired, the distributors, through their association,



voluntarily maintained the code of ethics set up under the act and several other of the provisions. When a hearing was held later for a Federal Order in the market the distributors opposed the establishment of the order on the grounds that an effective effort was being made to maintain, through voluntary cooperation, the stability in the market accomplished by the Burk Act.

### THE OHIO BURK LAW

Distress in the dairy industry affecting both producers and dealers was registered with Governor White and the Legislature of Ohio in the early part of 1933. As a result Governor White appointed an investigating committee of which Clarence Burk a member of the House of Representatives, was made chairman. After some weeks of study a bill was prepared and introduced in the House by Mr. Burk. The act was declared to be an emergency law to expire the first day of July 1935 unless extended by the general assembly. It was passed on June 8, and signed by the Governor on June 22, 1933.

In addition to declaring that the milk industry was a business charged with a public interest the act contained this more specific statement of purpose.

"Sanitary regulations and standards of content and purity adopted by health authorities, however effectively enforced, have been found in actual experience in this state insufficient in and of themselves to insure such control of the system of marketing milk as to safeguard the consuming public and the persons engaged in the milk industry in its various branches against evils which threaten the economic integrity of the industry and tend to undermine such health regulations and standards themselves. Such evils consist of unfair, unjust, destructive and demoralizing trade practices, which have been and are now being carried on in the production, sale and distribution of milk. The conditions resulting therefrom constitute a menace to the health and welfare of the inhabitants of this state.

It is and has been the policy of this state to foster and encourage sound and effective methods of marketing agricultural food products of this state, as evidenced by the creation of the bureau of markets in the department of agriculture, pursuant to section 1089-2 of the General Code, by the enactment of laws relative to cooperative agricultural associations, as evidenced by sections 10186-1 to 10186-30 of the General Code, and particularly by section 10186-26 thereof, and to protect the agricultural interests of this state against unfair and discriminatory practices in connection with marketing, as evidenced by section 6401-2 of the General Code.

As a result of this policy the normal process of marketing has come to be a cooperative enterprise which ought to be safeguarded and protected by social control. It is the intent and purpose of this act more effectually to promote the settled policy of this state as so established so far as the marketing of milk is concerned, and to provide an effective means of social control to that end."

The act created an Ohio milk marketing commission of four members. The commission was given authority to employ an executive secretary,

other clerical or office assistants, and not to exceed ten examiners. The commission was part of the Department of Agriculture in the following respects. The work of the commission was coordinated with the marketing functions carried on by or under the authority of the department and the director of agriculture was permitted, upon application of the commission, to assign any employee of the department to assist in the administration of the act. The commission also received direct assistance from the Attorney General through the assignment of one of his staff to be its legal counsel.

Under this law each milk dealer was required to apply to the commission for a license to engage in the business.

The commission was given extensive powers to investigate and supervise the production, storage, distribution, and sale of milk. It could act as mediator and arbitrator in any controversy or issue that might arise among or between producers and dealers, or any other groups participating in the milk industry.

The commission was empowered to determine and designate any area of the state as a natural marketing area. This was an important provision because it gave the commission the opportunity to take, in order, the markets that appeared to be most in need of stabilization. Coupled with this power of the commission was authorization to producers and milk dealers to confer and agree upon the prices and market practices to prevail in a given marketing area. This set the pattern of procedure. The established practice was for producers, represented by one or more cooperative associations, to work with the dealers in a market in preparation of a proposed set of rules and regulations for the conduct of the milk business in that particular market area. On some items of this proposal there might not be a complete agreement between the parties. When a tentative plan had been worked out the commission was asked to set a date for a public hearing. At this hearing testimony in support of the plan was presented and anyone who desired to do so was permitted to testify for or against any provision or for certain modifications.

The law provided that producers and dealers might confer and agree upon prices to be paid producers and that distributors, producer-distributors, distributing brokers, and retail stores might confer and agree upon uniform wholesale and retail prices for milk to be offered for sale in the market. Section 16 of the act provided that "No such agreement shall, however, be effective until and unless a copy thereof signed by all persons, parties thereof, shall have been filed with the commission as hereinafter provided." Because of the great difficulty of getting all parties concerned to sign an agreement no such agreement was ever presented to the commission for approval.

In addition to the powers mentioned above the commission was given specific power to adopt and enforce rules and regulations by orders. For the purpose of making an investigation the commission, or any member thereof, and the executive secretary had power to administer oaths, take deposition, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In the case of disobedience of any person to comply with an order of the commission or a subpoena issued by it, the common pleas judge of the county in which the person resided must compel obedience by attachment proceeding, as for contempt.

There was one paragraph of Section 5 defining the powers of the commission on which there was some litigation in the courts. It reads as follows:

(f) To appoint for any market or any two or more contiguous markets one or more advisory boards of producers or distributors, or of both producers and distributors, to assist the commission in the performance of its duties. In case any such advisory board shall consist of both producers and distributors the representation of each class of members shall be equal. Producers so appointed may or may not be duly authorized officers of any one or more cooperative agricultural associations, and distributors may or may not be members of any organization of distributors. The members of any such advisory board shall serve without compensation. Any such advisory board or any such advisory boards acting in conjunction in any marketing area may submit to the commission recommendations with respect to rules and regulations to be adopted by the commission, or to be adopted with its approval by any such associations of producers, or of distributors, or of both. The commission may adopt or approve any such rules or regulations which may be designed to accomplish the purposes of this act and any such rules or regulations so adopted or approved shall be lawful, any provision of Section 6391 of the General Code to the contrary notwithstanding.

It was through these control committees or advisory boards that the commission delegated the detailed supervision of pooling and other activities provided for in the orders. Further discussions of the functioning of the Control Committees in both markets will be given later. It is significant that Judge Mack in Cincinnati in April, 1935, ruled that the Control Committee in that market conformed to the definition of 'Advisory Board' in the act.

#### Operation of the Cincinnati Market under the Burk Act

Cincinnati was among the first of the major markets to present rules and regulations to the Ohio Milk Marketing Commission for approval. An order placing the market under control was issued on September 27, 1933. It set forth the duties of the parties concerned, created a Control Committee, prescribed the deductions to be made including those to support the Dairy Council, and recorded specific provisions as to the purchase of milk from producers and its resale in the city market. The order con-

tained the following six exhibits. (1) Cincinnati Market Sales Area, (2) Cincinnati Production Shed, (3) Schedule of Prices and Rules for Purchasing Milk from Producers, (4) Production Control Plan, (5) Schedule of Minimum Selling Prices, and (6) Rules of Fair Practices.

Under the procedure established by the Ohio Milk Marketing Commission the producers or distributors in any market operating under an order were authorized to come to the Commission at any time and request a hearing for the purpose of amending their Rules and Regulations. Between the original hearing in September, 1933 and the expiration of the Burk law in July, 1935 the Cincinnati market had 10 hearings before the Commission.

The dates of these hearings and the changes in the Order resulting from them are given below:

Date	Order Number	Changes made
Sept. 27, 1933	5	(Original order)
Oct. 25, 1933	12	Schedule of selling prices
Dec. 22, 1933	34	General order on sales to bulk purchasers
Apr. 12, 1934	112	Membership solicitation by cooperatives
July 11, 1934	156	Allotment of producers' base
July 26, 1934	165	Change in producer and dealer prices
Aug. 9, 1934	174	"Production control" changed to "Supply control"
Sept. 26, 1934	202	Request for price changes denied
Jan. 24, 1935	258	Changes in classification and class prices
Feb. 28, 1935	273	Revision of supply control plan
Mar. 6, 1935	No number	Middletown equalization fund

It is significant that in eleven hearings before the Commission, producer prices were an issue in only four. They were established in the first order September 27, 1933, raised July 26, 1934, a change was denied by the commission September 26, 1934, and prices were lowered on January 24, 1935.

In Order No. 174, issued on August 9, 1934 for operation of a supply plan, the producers were divided into two groups, namely: Group A comprised of the Cooperative Pure Milk Association and its distributing sales outlets and Group B, which included all other producers and distributors operating in the pool. This order allotted the total base milk in the pool proportional to the amount of Class I and Class II sales of the respective groups. Order 273, the last issued for the Cincinnati market, provided for an equalization between the groups within the pool on delivered base.

Reference is made to the provisions of Order 174 because it dealt with a problem around which there has been much heated discussion in the Cincinnati market. The Cooperative Pure Milk Association took the position that by virtue of having its own distribution facilities it should be regarded as a producer-distributor. It will be noted that in Order 174 the Commission supported the position of the Cooperative Pure Milk Associa-

tion as a producer-distributor, but in Order 273 receded from this position by providing for equalization between the two groups in the pool. The same problem arose again when the market came under Federal control.

### Litigation in Cincinnati Arising Under the Burk Act

Two important cases arising from violations of the Burk Act reached the Court of Common Pleas of Hamilton County, Ohio. The first case was State of Ohio and Ohio Milk Marketing Commission on the relation of Louis J. Schneider, Prosecuting Attorney vs. Schrimper Dairy Company. It was tried before Judge Mack.

It was alleged in the petition of the plaintiff that the defendant was violating the provisions of the Act and the orders and regulations of the Commission in the following particulars, viz: (1) In failing to obtain a license as required by the act, (2) In failing to deduct three cents per hundredweight from the producers supplying milk to him and paying the same to the Control Committee as provided, (3) In failing to pay his producers for milk purchased from them.

The plaintiff declared that criminal action would not afford a proper and adequate remedy and asked that the defendant be restrained from distributing, selling, or marketing milk or cream in the Cincinnati Market Sales Area.

The defendant demurred upon two grounds, viz: (1) There was a misjoinder of parties plaintiff, and (2) the facts set out in the petition did not state a cause of action. The court ruled that the first ground of the demurrer was untenable in the opinion of the court. As to the second ground, the argument turned on whether the remedy of the State was restricted to a criminal proceeding. On this point the concluding statement of the court was as follows:

"In view of the fact that the business of milk marketing is one charged with the 'public interest' and in view of all the allegation contained in the petition hereinbefore set forth, and upon clear rule expressed in the decisions hereinbefore referred to, it follows that the demurrer to the petition should be over-ruled." (This opinion was handed down November 27, 1934.)

A second case of the Ohio Milk Marketing Commission was that of Henry Kattelman, which came before Judge Mack in April, 1935. The defendant in this case was charged with violation of the rules and orders in the following respects: (1) Failing to obtain a license for the period beginning July, 1934; (2) failing to turn over to the Control Committee money deducted from producers supplying milk to defendant; and (3) failing to send monthly reports. As in the preceding case an injunction was asked for.

The defendant admitted that he had refused and would continue to refuse to obey the orders of the Ohio Milk Marketing Commission for the following reasons: (a) The rules and regulations set up a so-called "Control Committee", which provides for a delegation of authority from the Ohio Milk Marketing Commission not authorized by statute or law; (b) some members of the Control Committee are compensated and are incurring expenses without the authority of law; (c) the Control Committee is operating a milk pool contrary to law; (d) that the amount to be paid for Class III milk takes money and property from the defendant without an equivalent thereof and interferes with defendant's contractual rights with respect to producers from whom milk is purchased; (e) that the Code of Regulations is void because it attempts to regulate production and sales in Indiana and Kentucky; and (f) that the portion of the Burk Act creating the Ohio Milk Marketing Commission is unconstitutional.

It is further alleged that the defendant never agreed to the Code of Rules attached to the petition, and that the same was adopted as an emergency order and defendant denies there is an emergency in the production and delivery of milk in this state.

The plaintiff made a general denial of these claims.

Judge Mack, in his opinion on this case given April 17, 1935, upheld the constitutionality of the Burk Act and denied that it was unconstitutional in that it was a delegation of legislative powers. Much of the argument in this case turned around the Control Committee. The court noted that there was no provision in the act for a "Control Committee" but that the powers exercised were those of an "Advisory Board" mentioned in the Act. The comment of the Court at this point is significant:

"If on further hearing it develops that the Advisory Board (called Control Committee) is attempting to collect money from the defendant contrary to the express provisions of Section 5 (f) of the Burk Act, providing that the Advisory Board shall serve without compensation, then to that extent this Court will declare such attempt to be unlawful, and that defendant is not required to make contribution by way of compensation to such Board."

Judge Mack ruled in favor of the Ohio Milk Marketing Commission and granted a restraining order.

#### Toledo Market Under the Burk Law

Cincinnati was one of the first markets to be established under the Burk Law with Order No. 5 issued on September 27, 1933. Toledo was the last of the larger city markets to come under regulation with Order No. 76, issued March 16, 1934. This was due in a large measure to the difficulty of getting satisfactory producer representation. The Northwestern Cooperative Sales Association was not selling a large percentage of milk going to

Toledo distributors Neither the non-cooperating producers nor the distributors to whom they sold were willing to be represented solely by the Association The first proposal for a market agreement presented to the Ohio Milk Marketing Commission provided for a general sales committee to be composed of four members of the Northwestern Cooperative Sales Association, five producers from the three larger distributors and five selling to the remaining distributors in the market.

There are some significant differences between the original orders for the two markets. In the Cincinnati order, as was stressed above, great emphasis was placed upon the Control Committee. In the operation of the Toledo order more emphasis was placed upon the Grievance Committee.

The provision setting forth the duties of the Committee was as follows:

A "Grievance Committee" shall be selected, consisting of five members; two members shall be selected by the Producers Committee and two members shall be selected by milk dealers. The fifth member shall be selected by the four so chosen.

Milk dealers and producers shall use their best efforts to assure the observance of these rules and regulations, the Act and all sanitary regulations. If any violation of the same shall come to the attention of any milk dealer or producer such person, shall report the same to the Grievance Committee together with all available substantiating evidence.

It shall be the duty of the Grievance Committee to investigate all such violations, and call upon the person under investigation to appear and answer to the charges. If after due consideration the charges are found to be true, the Grievance Committee shall put forth all reasonable effort to correct the violation. If such violation is not corrected, the Grievance Committee shall prepare all evidence in proper form and take such action as is provided by law.

Order No. 76 which put the Toledo market under rules and regulations followed the pattern of the preceding orders of the Commission. Following the general provisions, there were these five exhibits: (1) Toledo Market Sales Area, (2) Toledo Production Shed, (3) Method of Buying Milk from Producers Prices to be paid and Details of a Production Control Plan, (4) Schedule of Minimum Selling Prices, and (5) Code of Fair Practices.

A brief summary is given below of the seven orders promulgated by the Commission for the Toledo market March 16, 1934 to March 13, 1935, inclusive.

Order No. 76 March 16, 1934	Original order described above.
Order No. 102 April 11, 1934	Lowered the price of Class 1-A milk and raised the price of Class 2. Authorized postponement of effective date of base plan.
Order No. 172 August 2, 1934	Increased prices of Class 1 1-A and 2 by ten cents per cwt and of Class 3 by five cents per cwt with no change in resale prices.
Order No. 218 October 24, 1934	Modified provisions of previous orders regarding base plan. Commission declined to make any change in prices.

Order No. 257 January 23, 1935	Confirmed agreement by Milk Dealers Association, Producers Committee and Milk Control Committee to increase wholesale prices on milk and both wholesale and retail on heavy cream. Extended terms of local committee members to July 1, 1935.
Order No. 265 February 14, 1935	Corrected error in Order No. 257 making price of half pints of milk 3 cents instead of $3\frac{1}{4}$ cents.
Order No. 277 March 13, 1935	Raised prices to be paid producers and prices to be charged by dealers.

It will be noted from the summary given that all the orders except No. 218 resulted in some change of price either of producers, dealers, or both.

### Summary of Opinion Regarding Burk Law Operation

Organized producers were in general the most enthusiastic about the benefits obtained by State control. Many distributors were willing to admit that as a result of this supervision on the part of the State some of the worst competitive situations in the wholesale and retail trade were improved. The gains most often mentioned and on which most emphasis was placed by those interviewed were: (a) the elimination of substantial reduction of dealer discounts and other forms of price cutting, (b) a more accurate classification of milk as to its use, (c) general stabilization of the price structure both at the producer and at the distributing levels, and (d) participation in the market control plan by all dealers and producers in the markets.

### INTERIM PERIOD OF INDUSTRY CONTROL

The legislature did not enact any legislation to take the place of the Burk Act when it expired on July 1, 1935. There was therefore a period of approximately 3 years when the milk industry in these two markets as well as all other markets in Ohio was on its own as far as economic regulation was concerned.

Consideration will first be given to events in the Cincinnati market. It was felt by both producers and distributors that some type of market control should be established. There was hope at this time that State control would be re-enacted later. Acting upon this theory, the two bargaining cooperatives in the market set up The Cincinnati Sales Association and entered into full supply contracts with the majority of the handlers in the Cincinnati market.

This new corporation provided the means by which the Kentucky, Indiana, Ohio Milk Producers Association and the Milk Producers Union



could combine in providing certain marketing services and particularly in operating a pool of all milk sold to cooperating distributors. With this arrangement the two associations dealt jointly with the distributors in all price negotiations. The Cooperative Pure Milk Association and the French-Bauer Company did not participate in this plan.

Full supply contracts were entered into between the Sales Association and about eighty percent of the dealers in the market. The distributors agreed to have their purchases and sales audited, a classification pool computed, and to pay the Cincinnati Sales Association for all milk purchased. The Sales Association in turn paid the producers.

This plan both with respect to pricing and to pooling the returns worked well with respect to the distributors who were on contract. However, this voluntary program eventually began to run into trouble. About fifteen or twenty small distributors whose business was largely Class 1 or bottled business refused to go along in this voluntary pool and paid their producers a price 5 or 10 cents per hundred pounds more than the pool or blend price of the cooperating group. This enabled them to make inroads into the supply of the distributors who were complying with the agreement, when milk became short in the market.

The problem then became one of holding the program together. The only method of holding all dealers in the pool was by enforcement of the contracts through the local courts. It was claimed by the management of the Cincinnati Sales Association that their experience indicated that judges either were not familiar enough with milk marketing procedure or for some other reason were unwilling to give these matters proper consideration.

By the fall of 1937 there were only 26 of the original 36 distributors complying. At this point the Cincinnati Milk Exchange announced the intention of its members to withdraw and the plan virtually collapsed. Those who were most concerned with stability in the market decided the only alternative now left was to attempt to establish market controls at some other level. It was then that the Cincinnati Sales Association, the two cooperatives comprising it, and the Cooperative Pure Milk Association jointly asked for an agreement or order to be set up under the Federal Agricultural Marketing Agreement Act of 1937.

In the Toledo market the interim period of 1935-1937 presents a different picture than that of the Cincinnati market. The producer movement as was shown above was not in a dominant position at the time the Burk Act expired. The patronage of distributors in Toledo was divided between the Northwestern Cooperative Sales Association and the Toledo Fluid Milk Producers Association. There is evidence that distributors were more kindly disposed to the marketing philosophy of the latter than that of the former.

On May 1, 1936 there was a change of managers in the Northwestern Cooperative Sales Association. The board of directors and the new manager made plans for expanding membership among producers shipping to Toledo distributors. At this time the Association claimed a membership of approximately 35 percent of the producers shipping to the Toledo market.

The policy of the association was definitely one of building up prestige within the Toledo fluid market. Meetings were held in the country to bring before the members the new objectives. Frequent conferences were held with the agricultural extension agents of the area. A study of the annual reports of these extension agents and other published and unpublished material covering the period of 1936 and 1937 shows that the association was losing the inferiority complex that had previously prevailed respecting the Toledo market. The campaign for new members was successful and by the fall of 1937 the percentage of members' milk in the Toledo market had risen from 35 to 73.

Association distributor relationships did not improve at the same rate as did membership. The manager of the association claimed that "during this period the association had made patient and persistent efforts to secure the cooperation of Toledo handlers in the establishment of a fair, voluntary, cooperative marketing plan."

The distributors claimed that they had a satisfactory contract and market arrangements with the Toledo Fluid Milk Producers Association. They stated that they were buying milk on a classified basis, paying \$2.35 per hundred pounds for Class 1, \$1.65 for Class 2, and  $3\frac{1}{2}$  times the price for 92 score butter at Chicago plus 15 cents per hundred pounds for Class 3 milk. The Northwestern Cooperative Sales Association found that there was almost never any difference between the prices paid producers selling to the four largest distributors in the market. It was claimed by the association that in an individual distributor pool no such uniformity of plant experience could possibly occur over a period of several months.

The Toledo distributors and the Northwestern Cooperative Sales Association failed after several conferences to arrive at a mutually acceptable plan for cooperating in the Toledo market. On September 4, 1937 the Northwestern Cooperative Sales Association made application to the Dairy and Poultry Branch of the United States Department of Agriculture for a hearing on a proposed marketing agreement and order for the market.

#### THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

Congress passed the Agricultural Adjustment Act on May 12, 1933. One of the objectives of the act was to increase the prices of certain farm products for the farmers by decreasing the quantities produced. The de-

crease was to be attained by making payments of money to farmers, who under agreements with the Secretary of Agriculture, reduced their acreage and crops, and the money for this purpose was exacted as a tax from those who first processed the commodity. The act also empowered the Secretary of Agriculture to enter into marketing agreements with processors, associations of producers, and others engaged in the handling in the current of interstate or foreign commerce of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties.

The constitutionality of the processing and floor-stock taxes was challenged and came before the United States Supreme Court in the *Hoosac Mills* case on December 9 and 10, 1935. The Court rendered a decision adverse to the Government in which it held that the act invaded the reserved powers of the states and further that the regulation of the farmer's activities under the statute, though in form subject to his own will, was in fact coercion through economic pressure.

The decision of the Court left some question as to whether it affected the validity of the provisions respecting the marketing agreements. As a result of this uncertainty Congress enacted the Agricultural Marketing Agreement Act of 1937 re-enacting, amending, and supplementing the Agricultural Adjustment Act as amended. This is the Federal legislation under which the present milk marketing agreements and orders are operated.

The preamble of the Act states that it is the purpose of the Congress to re-enact the provisions of the Agricultural Adjustment Act that were not intended for the control of the production of agricultural commodities and to further amend this Act.

In the declaration of policy a significant change was made. The original act read, "It is hereby declared to be the policy of Congress (1) through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. . . ."

The Agricultural Marketing Agreement Act of 1937 was changed to read: "Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such **orderly marketing conditions** for agricultural commodities in interstate commerce as will **establish** prices to farmers . . ."

Milk was given special treatment among the commodities covered by

the Act. An entire new subsection (18) was added to section 8c carrying the caption "Milk Prices."

This subsection provides that prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid producers or associations of producers, the Secretary of Agriculture shall ascertain the prices that will give milk or its products a purchasing power equivalent to that of the base period of August 1909 to July 1914. This requirement is further modified by the provision that the level of prices which it is declared to be the policy of Congress to establish shall be such as will reflect the price of feeds, the available supplies of feeds, and other economic conditions, which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at a hearing, that the prices computed on the parity formula using August 1909 to July 1914 as the base period are not reasonable in view of the price of feeds, the available supplies of feeds and other economic conditions which affect market supply and demand for milk and its products in the marketing area, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.

The power here given to the Secretary of Agriculture is converted into action through (a) the medium of an agreement with processors, producers, associations of producers, and others engaged in the handling of the commodity, or (b) by the issuance of an order. The section (8c) granting this power provides that such orders shall regulate only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

In the case of all orders regulating the sale of milk and its products it is provided that there may be a referendum of the producers that would be affected by the order. A significant provision of Section 8c (12) is the power granted a cooperative association to vote its membership as a block in any such referendum. It says: "The Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing any commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative associations of producers. An order to be effective must have the ap-

proval of at least two-thirds of the producers or producers of two-thirds of the commodity.

Section 8c (7) (C) provides for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies which shall have only the powers: (1) To administer an order in accordance with its terms and provisions, (2) to make rules and regulations to effectuate the terms and provisions of an order, (3) to receive, investigate, and report to the Secretary of Agriculture complaints of violations of an order, and (4) to recommend to the Secretary of Agriculture amendments to an order.

The provisions for enforcement are contained in Section 8a, (5) (6) and (7). The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement made or issued pursuant to this title. It is further provided that upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title.

#### COMPARISON OF THE BURK LAW WITH THE AGRICULTURAL MARKETING AGREEMENT ACT

The objectives of these two pieces of legislation differ. The Burk Act was passed with the avowed purpose of checking certain unfair and destructive trade practices then prevalent in the milk industry. While it was true that producer prices were at a very low level and farmers were pleading for help the emphasis in the statement of objectives was placed upon restoring sound competitive conditions in the markets. In order to accomplish this the Commission was given power to establish and enforce resale prices as well as prices to be paid producers. Some distributors interviewed in this study expressed a distinct preference for the Burk Act over the Federal Marketing Agreement Act because of the stabilizing effect of the State orders upon the city market.

The object of the Agricultural Marketing Agreement Act of 1937 as quoted above was to bring the prices to be paid farmers for milk into such position as would give these farmers a purchasing power on a parity with that they enjoyed in the base period, 1909-1914. No provision is made in this law to establish the prices to be charged by handlers in the resale of milk and its products.

The greatest similarity in the two programs is in the method followed in arriving at the provisions of the rules and regulations to be promulgated.

In both State and Federal procedure there is the public hearing held upon request of the producers of the local market area. In actual procedure there is this difference. In the hearing under the Burk Act either the Commission as a whole or one or more of the commissioners conducted the hearing with an assistant attorney general present as legal adviser. In the Federal hearing an attorney from the legal staff of the United States Department of Agriculture is designated as the hearing officer. There are also present two or more economists who are privileged to question witnesses throughout the hearing. The Federal hearing has more the appearance of a case in court than did the hearing under the Burk Act. The hearings conducted by the Commission were shorter than those held to establish or amend a Federal order. This may be due in part to the more exacting requirements of the Department of Agriculture as to detailed economic information but it is evident that the greater emphasis upon legalistic detail on the part of hearing officers is mainly responsible.

The Marketing Agreement Act provides for two different types of administrative hearings. The first is the promulgation hearing, the second is generally known as the "15-A" hearing because of the subsection in which it is described. In the promulgation, amendment, or termination of marketing orders: (1) a notice of hearing is issued and published by the Secretary, (2) an officer is appointed to preside, (3) those interested may appear in person or by counsel, (4) testimony and documentary evidence is taken, (5) oral argument may be made and briefs may be submitted, and (6) a proposed order may then be published upon which interested parties may file exceptions.

Section (15) (A) provides that any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The rules of practice and procedure are somewhat more formal than in the promulgation hearing. A handler or handlers file a petition, a presiding officer is appointed, some of the facts may be settled by stipulation at informal conferences, the petitioners must appear in person or by counsel, and oral and documentary evidence is taken. The law provides specifically for court review in a district court of the United States if the handler wishes to appeal from the decision of the Secretary of Agriculture.

Although these are suits "in equity," the court determines them upon the record made in the administrative 15-A hearing. The issues may be the validity of the statute, the sufficiency of the statute to warrant what is being done in the order being contested, the adequacy of the evidence to justify what has been done in the order, or the fairness and lawfulness of the ad-

ministrative procedures. Presumably no issue may be determined in court unless it has first been properly presented to the administrative officers for their ruling.

The sharpest contrast in the two systems is to be found in the local administration of the orders after they have been issued and approved. In the operation of the Burk law much emphasis was placed upon local committees. In most markets there was a so-called milk control committee and a grievance committee. The duties of these committees were spelled out in considerable detail in the orders and the members became in a large measure the official representatives of the Commission in the local market. Two weaknesses soon became evident in this plan. There was first the legal question as to how far the Commission could actually go in delegating its authority. This point was involved in the court cases in Cincinnati mentioned previously involving the Cincinnati Control Committee. The other and more serious difficulty came in finding men in a market who were willing to carry out the duties given to these committees. Some situations were sure to arise in which a member of a committee would find himself in an embarrassing situation with respect to his competitors if he discharged his full responsibility in the strict letter of the law.

Under the Federal act the responsibility of local administration rests wholly upon the market administrator. The local cooperative leaders and handlers are invited to consult freely with him and make suggestions to promote the smooth working of the order, but there is no delegation of administrative duties to any committee in the market. The general consensus in these markets was that the market administrator plan is the more effective.

A comparison of the hearing schedules in these markets under the two control plans shows a faster action on the part of the Ohio Milk Marketing Commission. For the Cincinnati market there were eleven hearings between September 27, 1933 and March 6, 1935, and for Toledo there were seven hearings between March 16, 1934 and March 13, 1935. The orders following these hearings were made effective a few days after the date issued, usually at the beginning of the next month.

Under Federal control, hearings were held less frequently but the time elapsing between the hearing and the effective date of the order resulting was much greater. In the Cincinnati Market nine hearings were held between November 29, 1937, and May 26, 1945. The longest time between hearing and effective date of a resulting order was 6½ months and the shortest time 1 month, with an average of 4 months. In the Toledo market there were six hearings between May 10, 1938 and October 23, 1945. The longest time between opening date of a hearing and effective date of an order was 13½

months and the shortest time was 1 month with an average of  $5\frac{1}{2}$  months.

In the effectiveness of enforcement through the courts in both markets the advantage lies definitely with administration under Federal orders. The local courts either at the suggestion of the Attorney General or the request of the local grievance or control committees were generally slow to take action and when actions were started there were many and long drawn-out delays. On the other hand, the Federal Government has been able to obtain prompt and effective enforcement of the orders in Cincinnati and Toledo at all times.

## HEARINGS UNDER MARKETING AGREEMENT ACT OF 1937

### Preparation for a Hearing

A considerable amount of work is necessary both in the local area and in Washington before a promulgation hearing is held. In the market for which an order is requested the producer association or associations that are making the application must assemble and organize data bearing on the local situation that will support the claim that an emergency exists in the meaning of the statute. This is generally done with the assistance of legal counsel. A proposed agreement or order is then prepared for presentation to the Secretary of Agriculture.

While this material is being assembled locally the economists in the United States Department of Agriculture are preparing what is known as an economic brief. This is a comprehensive presentation of economic data obtained from statistical records available in Washington. In addition it may contain an explanation of some of the provisions of the proposed order in non-technical language and suggestions as to points upon which more specific data should be presented as testimony or documentary evidence in the hearing.

In addition to the assembling of economic data there was also a series of conferences between producers and handlers in both of the markets studied. A representative of the Department of Agriculture took part in one or more of these conferences.

### Promulgation Hearing, Cincinnati

The first hearing for the Cincinnati market opened at the Hotel Alms on November 29, 1937. O. E. Mather, Special Counsel, U. S. Department of Agriculture, was the hearing officer. He opened the hearing with this statement: "This hearing is for the purpose of receiving evidence as to the general economic conditions which may necessitate regulation in order to effectuate the declared policy of the Agricultural Marketing Agreement Act



of 1937 and as to the specific provisions to which a marketing agreement and order should pertain."

It was announced that the hearing would involve evidence and discussion upon: (1) selection of a market administrator, (2) classification of milk, (3) minimum prices to be paid producers, (4) payments to producer through a market settlement fund with a base rating plan, (5) deductions from payments to producers, (6) marketing services to be performed by the market administrator, and (7) expense of administration.

There was present at the hearing over 100 interested persons representing producer cooperative marketing associations, individual producers who did not sell through a cooperative association, handlers from Cincinnati and adjoining markets, consumers, agricultural extension agents, and economists from The Ohio State University. The active participants in the hearing included legal counsel of producers and handlers and both economists and legal counsel from the United States Department of Agriculture.

Following the presentation of the economic brief the cooperative associations who were the proponents of an agreement and order began presenting evidence. They reviewed the experience of the market under regulation of the Ohio Milk Marketing Commission from 1933 through 1935 and the difficulties that developed in the attempt to operate under voluntary industry agreement in the period following the expiration of the Burk Act. One of the cooperative leaders concluded his testimony with this statement: "We expect to show by the evidence adduced in this hearing that only by having a market program in which all producers and all dealers participate, can we hope to have an economically sound and workable program, which will serve both producers and dealers fairly and honestly."

Much of the testimony of the remainder of the day dealt with the status in the market of the Cooperative Pure Milk Association and its distributing subsidiary, French-Bauer, Inc. The secretary of the Cooperative Pure Milk Association stated that his organization considered itself to be in the status of a producer-distributor in the market.

Counsel for some of the dealers in the market complained that the dealers had not had time to study and understand the economic brief and proposed agreement and asked that the hearing be adjourned to the middle of January. The hearing officer granted his petition and adjourned the hearing until 9:30 a.m., January 4, 1938.

The hearing was reopened as provided on January 4, 1938. The hearing officer, Mr. Mather, ruled that the agreement or order would be taken up section by section in order. There was no testimony presented on section 1 which defined the Secretary of Agriculture.

Section 2 defined the marketing area as follows: "Cincinnati, Ohio Mar-

keting Area" hereinafter called the "Marketing Area" means the territory included within the boundary lines of Hamilton County and of St. Clair and Fairfield Townships in Butler County, all in the State of Ohio, and the counties of Campbell and Kenton in the State of Kentucky." This section brought forth 31 pages of testimony and argument in the official record of the hearing. First to appear was counsel for 18 or 20 handlers from the two Kentucky counties included in the proposed area who claimed they represented 97 percent of the milk handled in these counties. These handlers asked to be excluded from the area. Other counsel for Ohio handlers objected to the inclusion of the city of Hamilton in the proposed area.

At this point the hearing record shows clearly the attitude taken by the hearing officer with respect to legal points raised by counsel for interested parties. It can best be shown by quoting directly from the record.

MR. ERNSBERGER (Counsel for five independent handlers): May I ask this? Presuming that a handler purchases all of his milk from Ohio producers and sells every drop of his milk to Ohio consumers, would he still come under the Act?

MR. MILLER: (Economist for U. S. D. A.) He might very well, yes.

MR. ERNSBERGER: How would that be?

THE CHAIRMAN: (Hearing Officer): If he is competing with handlers in the market area, he is engaging in interstate commerce and if the manner in which he handles his milk is such as to burden and obstruct the interstate business of those handlers, clearly he would come under.

MR. ERNSBERGER: Then it would be a question of competition, more than anything else?

THE CHAIRMAN: And other factors.

MR. ERNSBERGER: What would be some of the other factors?

THE CHAIRMAN: I couldn't say offhand. As you will recognize, it is a very involved legal question, and we are bound to admit that we do not know, and the courts have not told us the full scope of the Agricultural Adjustment Act, and we are just as anxious to have cases in court we are endeavoring to carry up to find out. So far, we are a lot in the dark with respect to certain aspects, as you are. (\*)

MR. ERNSBERGER: I am asking these questions because the act is so worded and the proposal is so worded that it is extremely difficult, and neither the producers or dealers or attorneys know where they stand.

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(\*) A case testing the question at issue here arose in the Chicago area. It reached the U. S. Supreme Court in 1942 as Wrightwood Dairy Company case. On February 2, 1942, the Court sustained the Government in holding that the Wrightwood Company should come under the order even though it neither bought nor sold milk outside the State of Illinois. The Court said "The national power to regulate the price of milk moving interstate into a marketing area, extends to such control over interstate transactions there as is necessary and appropriate to make the regulation of the interstate commerce effective.

THE CHAIRMAN The same thing is true of a great deal of other legislation. All we can do is to try to administer the Act as Congress wrote it. Unfortunately, we did not write the Act. (Hearing Record pp. 65-66)

An important question with respect to producer-handler relations was raised by counsel for a group of dealers who had refused to continue operating under the voluntary agreement with the Cincinnati Sales Association. He asked whether or not a handler who now has a contract with producers who are satisfied with a certain price and who wish to continue that contract would be subject to the order of the administrator. The reply of the hearing officer was that the contract would be disturbed to the extent that if the contract price were lower than the blend price of the order, the handler would be compelled under the order to pay the higher price.

An important discussion occurred over the sections defining the duties and responsibilities of the market administrator. Counsel for one of the handlers took the position that the administrator should be held responsible for the collection of all money due from handlers for milk received and if there was any doubt as to the handler's financial standing he should require that a bond be posted. The representatives of the Department of Agriculture maintained that this was not a duty assigned to him in the agreement. This significant statement was made by Mr. Miller:

"May I say for the record, in connection with that point, there is an important distinction I think we have to keep in mind, between the functions of the administrator as the administrator of a set of rules and regulations that are designed to have the effect of law on the actual marketing arrangements in the market. Now, it may be advisable to incorporate in this a provision requiring all handlers procuring milk from farmers in accordance with these provisions, to be bonded, so as to give ample financial security with respect to their ability to settle for their commitments. However, that gets into questions of selling milk, marketing milk, rather than merely administering of some rules and regulations with respect to which milk is to be marketed and priced. You have in this market cooperative organizations designed among other purposes to sell milk to handlers who will pay for milk, who are the most satisfactory outlets for those particular farms. We are anxious that the functions of such market facilities which farmers do have in this market, be clearly distinguished from those of a public administrator of this set of rules and regulations, which is not designed to complete or involve any more than necessary the actual marketing and trading relations between farmers and handlers."(†)

Article IV related to classification of milk. Section 1 set up the classes as follows:

Section 1, **Class Definitions.** — Milk received by each handler, including milk produced by him, if any, shall be classified by the Market Administrator as follows:

1. Class I milk shall be all milk sold or given away in the form of milk and all milk not accounted for as Class II or Class III milk.

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(†) The responsibility for protecting the producer against loss because of the financial weakness of a dealer was assumed by the State of Ohio by the passage of House Bill No. 569 in May 1941.

2. Class II milk shall be all milk used to produce cream (for consumption as cream), creamed buttermilk, and creamed cottage cheese.

3. Class III milk shall be all milk accounted for (a) as actual plant shrinkage but not to exceed  $2\frac{1}{2}$  percent of total receipts of milk and (b) as used to produce a milk product other than one of those specified in Class II.

The first objection raised was by counsel for the Independent Milk Dealers Association. He objected to the inclusion in Class I of "all milk not accounted for as Class II or Class III milk." The Cincinnati Milk Exchange and the Cincinnati Sales Association supported the proposal as given.

Another witness objected to the provision allowing for a  $2\frac{1}{2}$  percent plant loss to be included in Class III. He interpreted this to mean that the handler was being given this amount of milk. Mr. Miller explained that this was not the case because all milk received at the plant must be paid for by the handler.

Section 4 of the proposed agreement and order defined the computation of milk by classes. It was proposed in the hearing that this be done by dividing the total number of pounds of fat received by 4 to determine the number of hundred pounds of milk. Counsel for the Cincinnati Milk Exchange opposed this method of conversion on the grounds that the average butterfat content of milk coming to the market was higher than 4 percent and that this would therefore increase the cost of milk to the handler and thereby reduce his spread. The method in use at the time of the hearing was to divide the total pounds of fat received by average test of the receiving plant. Here is an example of a change from the proposal as it appears in the original draft resulting from testimony and argument presented at the hearing. In the agreement and order as finally signed the method in use in the market was approved.

With the exception of the question of what should be the market area the matter of integrating the business of the Cooperative Pure Milk Association and French-Bauer, Inc. into the program came in for the most prolonged and heated discussion. Counsel for two of the largest firms in the market took the position that if the French-Bauer sales ran a larger percentage in the higher priced classifications than the average of the entire market they should be pooled together with all other handlers so that all farmers would receive the same blend price. The problem was still further complicated by the fact that the market had in effect a base and surplus plan and that allotment of producer bases might differ as between the Cooperative Pure Milk Association and the Cincinnati Sales Association.

The auditor of the Cincinnati Sales Association pool presented figures based on the assumption that both the Cooperative Pure Milk Association and the Cincinnati Sales Association be assigned base equal to 130 percent

of Class I, I-A and II sales. Pools were then calculated on the basis of actual percentage of sales in these classes for September 1937 and the results were given as shown in table 1 below.

TABLE I — Comparison of Class Sales of Cooperative Pure Milk Association and Cincinnati Sales Association

	Class I percent	Class I-A percent	Class II percent	Class III percent	Blend Base price
Cooperative Pure Milk Association	50.43	9.17	17.32	23.8	\$2.3458
Cincinnati Sales Association	56.35	2.78	17.80	23.01	2.3806
Weighted Average of the Two	54.43	4.85	17.64	23.80	2.3694

#### Arguments Presented by Briefs

Interested parties are permitted to file briefs after hearings have been concluded to be considered by the attorneys of the Department of Agriculture in preparing the final draft of the order. The handlers presented their position in great detail in this market and also in Toledo by briefs. In order to show the character and scope of such a brief a summary is given here of the brief presented at the end of the series of hearings proposing the first agreement and order for the Cincinnati market. It was filed by the legal firm Nichols, Morrill, Wood, Marx & Ginter, Attorneys for the Matthews-Frechtling Dairy Co., and the Kroger Grocery and Baking Co.

The first sentence said, "The handlers which we represent in the Cincinnati area object to being subjected to Federal fixation of prices and control of the milk business by the Dairy Section of the United States Department of Agriculture on the ground that such regulation is shown by the hearing to be unwarranted under the facts and the law enacted by Congress." It was further claimed that in the Cincinnati area as defined in the proposed marketing agreement there was not then and never had been any disruption of the orderly exchange of milk in interstate commerce. The motive for inviting the Dairy Branch to come in was said to be the desire of the cooperatives' officers and agents to club certain independent farmers into the cooperatives and to club a few independent handlers into the milk pool.

In the direct attack upon the proposed agreement and order as amended the brief gave great importance to the fact that representatives of the three cooperatives had come together in a "pre-nuptial agreement" to approve and support the proposal. In this memorandum of agreement the Cooperative Pure Milk Association was to be treated as a handler that distributed milk

of its own production. The brief claimed that facts brought out in the hearing proved that this would not be fair to all producers and handlers in the market. Between the second and the third hearings it was claimed the producer representatives changed the terms of the first agreement so that the Cooperative Pure Milk Association and French-Bauer, Inc., would become a part of the pooling program. This was referred to in the brief as the "post-nuptial agreement" and it was claimed that the terms of this agreement were not subjected to an airing in the third hearing.

The proposal to have the market administrator collect from the handlers for milk received and pay in a lump sum to the cooperatives for later payment by them to their members was attacked as unfair and illegal.

With respect to the marketing area the brief took the position that the northern Kentucky section should be eliminated and that the city of Hamilton should be included.

In the pricing plan of the agreement and order Class III milk was placed on a formula basis, four times Chicago 92-score butter plus 30 percent. It was maintained in the brief that this method of basing the price against a manufactured product should also be used with reference to Class I milk.

The concluding paragraph summarizes the entire brief in these words:

"We submit that assuming the law to be valid no necessity for government intervention in the Cincinnati marketing area has been shown; that in many respects the terms of the proposed agreement and order are arbitrary, discriminatory, and not practicable; that parity computed in the economic brief to sustain the proposed regulation is a mathematical fiction and cannot be sustained under present economic conditions; that the proposed agreement and order do not comply with the conditions and effectuate the policies of Congress, and are not authorized by the Act; that the "form of hearing" did not comply with the rudiments of due process of law."

Briefs similar to this one were filed by both proponents and opponents of the order but space does not permit making a synopsis of the entire list. The testimony and argument of counsel contained in the transcript of the hearing, the notes of the legal and economic staff of the Department of Agriculture and these briefs are the basis for a final draft of a market agreement. When completed the proposed agreement is submitted to the producers of the market area for their approval or disapproval by a referendum.

#### Cincinnati Marketing Agreement and Order Number 22

In accordance with the procedure described above a marketing agreement was presented to the producers and handlers for their approval. The producer referendum resulted in a favorable vote of 98 percent of those voting. This represented 97½ percent of the milk involved. The agreement was signed by handlers representing 60 percent of the milk of the market. It

was approved by the Secretary of Agriculture to become effective on May 1, 1938. It is important to note that this was an agreement accompanied by an order and not an order only as now is in effect both in Cincinnati and in Toledo.

Printed copies of this and subsequent orders have been available to all interested parties. In brief, Order 22 established the "Cincinnati Marketing Area" as the city of Cincinnati and the territory included within the boundary lines of Hamilton, Ohio; provided for three classes of milk as requested at the hearing (see pages 27-28; set prices to be paid by handlers at \$2.75 for Class I milk of 4% butterfat, \$2.00 for Class II, and based the price of Class III on the Chicago butter market; provided that handlers should make payment to the market administrator for producer milk received and that he should in turn pay the cooperative associations for milk delivered by these members and pay non-members direct; made an assessment of 2 cents per hundredweight upon handlers for the expense of administration and set forth the duties of a complete audit of all receipts and sales in the market.

The economic changes of most significance brought about by this order over the period of industry control just preceding was the bringing under one auditing control of all milk of the market and the channeling of payments for producer milk through the office of the market administrator to the cooperative association.

#### Cincinnati Hearing of September 9, 1941

This was a hearing on a proposal to amend the tentatively approved marketing agreement as amended, and Order No. 22, as amended. Proposed amendments were submitted by the Cincinnati Sales Association to increase the price of Class I milk to \$3.00 per hundredweight and the price of Class II milk to \$2.25 per hundredweight; by the Cooperative Pure Milk Association to amend the order so as to provide for an individual handler pool instead of a market-wide equalization pool; and by the Matthews-Frechtling Dairy to delete from the order all provisions relative to new producers, place milk drinks whether plain or flavored in Class II instead of Class I, and take creamed cottage cheese out of Class II and place it in Class III, provide for the computation of the volume of Class I milk on a butterfat basis rather than on a milk volume basis, and provide for ascertaining the price of outside Class II milk in the same manner as outside Class I milk.

It is significant that at this time the market was not operating on the minimum prices provided in Order No. 22. On June 30, 1941 the handlers and the cooperative associations had entered into an agreement with respect to premiums above the Order prices. The premium on Class I was June, 15 cents, July-September, 20 cents, and October 1, 1941, to May 1, 1942,

45 cents. The premium on Class II October to May was to be 25 cents per hundredweight. This agreement was contingent upon the conversion plan remaining as then in effect under Order No. 22.

This hearing produced some significant comment on price making policy. Judge Gorman, testifying for handlers made this statement:

"What all of us need today, I think, handlers and producers alike, is a blend price for fluid milk that will be in the same percentage of the condensery price as it has been in the past. That is just as essential to the handlers as it is to the producers."

The handlers admitted the need for an increase in producers' prices both on the basis of rising costs of production and keener competition of buyers of milk for manufacturing. They maintained at the same time that the cost of distribution was also rising and that any substantial increase in producer prices would have to be passed on to the consumer in higher street prices.

Testimony with respect to the proposal of the Cooperative Pure Milk Association that an individual handler pool be substituted for the market-wide equalization pool was offered by Edward J. Tracy, counsel for the Association. He presented the position of the Cooperative Pure Milk Association in the market as follows:

"The Cooperative Pure Milk Association became a cooperative Producer-Distributor, distributing the milk of all its members.

The peculiar service designed to be rendered by this cooperative is distinguished from that rendered by a bargaining cooperative is that by adjusting its supply to its sales, it can obtain a better price for its members as producers. It guarantees them a market for their milk at all times, and it has a financial standing that is of immense value to its members in the business world.

It cannot be a party to a market-wide equalization pool, because the carefully worked out adjustments of supply to sales would be destroyed. The distributing plants on which it has spent years of saving would become in effect the property of all the producers in the market. These who have saved nothing and spent nothing on plants or facilities would come in on a "share the wealth" program that is neither honest nor American in its principle."

### Secretary's Action on Hearing of Sept. 9, 1941

No action came from the Washington office of the Surplus Marketing Administration until February 6, 1942 when an order was issued suspending Order No. 22 as amended effective February 28, 1942. No additional public information as to reasons for the suspension was given by the Secretary. It was generally felt in the market that the decision may have been influenced by a very close vote in the producer referendum.

Following the suspension the provisions of Section 3 of the Marketing Agreement Act were put into effect. This section provides that the Secretary or an employee of the Department of Agriculture that he may designate,



may serve as a mediator upon written application of a producer cooperative association in the area.

The market then operated under this mediation arrangement with Dr. Paul Miller as the representative of the Secretary. This is the only case known to the writer that this section of the Act has been invoked.

### Toledo Promulgation Hearing

The procedure in the Toledo market in obtaining a hearing is in sharp contrast to that followed in the Cincinnati Market. It will be recalled that in Cincinnati the three producer associations and the majority of the handlers of the market joined in working out a market agreement. In the Toledo area there were two producer associations operating, the Northwestern Cooperative Sales Association and the Toledo Fluid Milk Producers Association. The Northwestern Cooperative Sales Association alone made application to the Secretary of Agriculture on September 4, 1937 for a hearing on a proposed marketing agreement and order for the market.

The Toledo Fluid Milk Producers Association took a position with the distributors in opposition to the agreement or order.

The situation existing in the market as viewed by the Dairy Section of the Agricultural Adjustment Administration was concisely stated in the introduction of the Economic Brief in this paragraph:

"Available information indicates that not all of the practices which in other markets have been found to be conducive to stable and orderly marketing conditions for fluid milk are in regular operation in the Toledo area. It does not seem to be the practice for Toledo handlers to pay for milk on the basis of the use to which they put such milk. There appear to be almost as many buying plans as there are handlers in the market. With no established method of paying producers for milk according to use operating in the market, handlers apparently do not pay uniform prices for all milk disposed of in each case. Furthermore, there is no assurance that handlers are paying prices that would give milk a purchasing power with respect to the base period, or that reflect the current conditions which affect the market supply of, and demand for, fluid milk in the Toledo area. With marketing practices in the Toledo market apparently at such market variance from the practices which ordinarily tend to stabilize conditions in fluid milk markets, it seems quite probable that a price plan designed to place prices paid by handlers to producers on a uniform basis and to equalize the cost of milk among handlers would be efficacious not only to producers but also to handlers and consumers."

The interstate character of this market was established by the classification of producers in the records of the Division of Health of the City of Toledo. According to these records there were in August 1937 a total of 2,367 qualified producers of which 627 or 26 percent were producers with Michigan addresses. The milk of the Michigan producers crossed the Michigan-Ohio line before being sold by handlers in the marketing area.

One of the first moves of the Northwestern Cooperative Sales Association following the request for a hearing was a meeting with all the agricultural extension agents in the counties from which milk was received in the Toledo market. This was to acquaint the agents with the details of the program and to enlist their cooperation in getting accurate information into the hands of all producers.

The burden of proof as to the need for an agreement or order in the Toledo market fell entirely upon the Northwestern Cooperative Sales Association. It followed closely the general pattern. It requested that milk be classified into three classes as follows:

Class I milk shall be all milk, plain or flavored, sold or given away in the form of milk.

Class II milk shall be all milk used to produce cream (for consumption as cream), creamed buttermilk, and creamed cottage cheese.

Class III milk shall be all milk used (a) to produce a milk product other than one of those specified in Class II, and (b) as actual plant shrinkage but not to exceed 3 percent of the total receipts of milk.

The Association presented testimony to prove that milk had not been purchased by dealers on a true classification basis. Testimony was presented also on costs of milk production and of the requirements imposed by the Toledo Board of Health for the city supply.

The new producer provision was included as in the Cincinnati agreement. The new producer was to receive Class III price for all milk delivered "during the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month."

The proposed agreement provided for an individual handler pool. However, in the producer referendum the producer had a choice and could vote for or against it.

The distributors presented no direct testimony on the proposals as submitted but made a general denial on the stand of the testimony presented by the Northwestern Cooperative Sales Associations. At the end of the hearings the Toledo Milk Distributors Association filed a lengthy brief in which it was maintained that the hearing record failed to show any need for federal intervention. It claimed that the market was orderly and that prices were stable.

Order Number 30 was issued by the Secretary of Agriculture September 3, 1938, to become effective on September 16, 1938. It was responsible for several significant economic changes in the Toledo Market. In brief it designated a "marketing area" to consist of the city of Toledo, and the

towns and villages of Ottawa Hills, Maumee, Sylvania, Harbor View, Rossford, and Trilby, in Lucas County, and the township of Perrysburg in Wood County, all in the State of Ohio, and the village of Lakeside in Monroe County, Michigan, established the classes of milk as requested in the hearing; provided for a complete audit of receipts and utilization of milk by handlers on the basis of an individual handler pool; and set minimum class prices to be paid by handlers

The significant differences between the Toledo Order and the Cincinnati Agreement was the Toledo provision for the individual handler pool and the payment by handlers direct for milk delivered to producers instead of to the market administrator. Otherwise the division of responsibilities among the agencies within the markets were the same.

### Hearings to Amend Toledo Order

Hearings were held to consider proposed amendments to the original order No. 30 effective September 16, 1938 on March 13 and 29 and on December 2, 1939. As a result of these hearings an amended order was issued April 25 effective on May 1, 1940

The significant changes from the original order were:

(a) In the definition of "handler" the phrase "sold as milk" changed to "disposed of as milk."

(b) "Delivery period" was changed from 15-day period to calendar month.

(c) The term "cooperative association" was defined to mean "any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members and (b) to have and to be exercising full authority in the sale of milk of its members."

(d) A paragraph was added to the section dealing with verification of reports providing for reclassification of milk which was finally used in a class other than that in which it was first disposed of.

(e) Class I milk was priced at \$2.35 the same as in the original order but with this provision: "for Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers including persons on relief, the price shall be \$1.90 per hundredweight."

(f) Milk sold as Class I outside the marketing area was to be paid for at a price ascertained by the market administrator to be the price being paid for milk of equivalent use to dairy farmers supplying that market subject to a reasonable allowance for transportation from the handler's plant to the plant outside the area from which it was distributed.

(g) The most important change was the introduction of a "market share" plan. Each producer was given a choice between Option A and Option B. This was a variation of the well-known base and excess plan. The object was to reward the producer who delivered on a more uniform basis than the average of the market. The detailed provisions of the plan are given in Section 930-7 of the order. They include four pages of the printed copy.

(h) Section 930.9 (b) providing for payment to a producer's association was changed from specifying that this payment be the same as that taken by the market administrator for marketing services to such amount as might be authorized by the members of such association.

### Suspension Orders, Toledo Market

On March 31, 1943 an order was issued suspending the provision in 930.5 (a) (1) for a lower Class I price during April, May, and June. A similar suspension was issued on March 7 and 20, 1944 for that year. On March 7, 1945 an order suspended these price provisions for 1945. On March 8, 1946, they were suspended for 1946. It should be noted that these suspension orders applied only to the seasonal pricing provisions of the order and not to the entire order as in the case of Cincinnati in February, 1942.

### Cincinnati Hearing, May 5 and 6, 1942 to Reinstate Order

This market under the mediation agreement following the suspension of Order No. 22 on February 28, 1942 soon began to experience difficulties, because some handlers would not go along.

The market had been operating under the mediation section of the Marketing Agreement Act during March and April. Representatives of the Department of Agriculture had twice met with producers and handlers in the market and by mediation had arrived at the same prices as those of the suspended order.

It is significant that both the producers and the handlers represented by counsel at this hearing requested that an order be re-established for the Cincinnati area. Counsel for the Milk Exchange stated that operation under the mediation section of the act was not satisfactory because too many conferences were necessary and furthermore that only those handlers who agreed to mediate were bound.

It was agreed in advance of the hearing that four points would be given thorough discussion as the primary issues involved. There were (1) the pool plan, (2) prices, (3) establishment of a market advisory committee, and (4) the conversion plan. In addition to these there was some testimony presented on two other points, the need of a III-A classification and the pricing of out-of-area sales.

The question as to what pooling plan should prevail in the market takes up a great portion of the hearing record. The trend of the discussion can best be gotten from the testimony as presented. Mr. Paul Betscher defended the position originally taken by the Pure Milk Association that it should be classified as a producer-distributor. The Cincinnati Sales Association took a definite stand in favor of a market-wide pool which would place the

French-Bauer Company in the status of a handler and include its business in the pooling operation.

At this point testimony was presented for and against setting the market up under a new agreement or order as an individual handler pool.

In connection with this controversy a new proposal in the form of an amendment was offered by counsel for the Cooperative Pure Milk Association. It was proposed to be effective only in the event that the decision was for a market-wide pool. The objective was to pay from the producer settlement fund certain compensation to a cooperative association qualified to render services in the market such as absorbing burdensome excess receipts by plants not equipped for manufacturing.

Much of the time of the two days of hearing was given to the presentation of evidence bearing upon the increasing difficulties of milk production. Testimony was given on feed and labor costs by a member of the staff of the Department of Rural Economics of The Ohio State University and by county agricultural extension agents from Ohio, Indiana, and Kentucky; as well as by several dairy farmers in the area.

An entirely new proposal for a market advisory committee was made by the handlers. It would be composed of four producers and four handlers to sit as an advisory committee with power to recommend amendments, and authorizing the Secretary, if he so desired, to designate it as an arbitration committee. From the standpoint of this study, this is one of the most significant proposals to appear at any hearing. It represents a desire on the part of certain interests in the market to move in the direction of the form of market administration that existed under the orders of the Ohio Milk Marketing Commission during the years the Burk Act was in effect.

An attempt will be made to summarize briefly the various viewpoints that were expressed in the hearing on this proposal. J. P. Osborne, representing the Cincinnati Sales Association, said, "I had intended in my opening statement and presentation to suggest a committee comparable to the one spoken of here, but felt that since it had already been introduced by someone else that it was a part of the call and it wasn't necessary. We certainly have no objections so far as I know from anyone to such a committee, and can say that we heartily endorse it."

Robert N. Gorman, counsel for the Cincinnati Milk Exchange, argued that an amendment proposed by such a committee would carry more weight than if it came from a single interest in the market. He said further, "I would think there might be many matters that would come up from time to time that the market advisory committee would want to pass upon, but primarily as I have always said, it would be a committee set up for the purpose of arbitration, of mediation at any time in this market."

Edward Harris, representing the Consumers' Counsel Division, U. S. Department of Agriculture, asked whether it was the intent of the proponents that the market advisory committee should have no representation of consumers on it. Mr. Osborne replied that if the Secretary of Agriculture were to appoint the consumer representatives he would have no objection to such addition to the committee. Mr. Gorman took the same position.

Paul Miller, speaking for the Agricultural Marketing Administration of the U. S. Department of Agriculture, asked whether there couldn't be such a body constituted without appointment by the Secretary. Mr. Gorman replied, "There is a law called the Anti-trust law that I might be rather fearful of if you so proposed. I think that is the answer."

### Cincinnati Amendments 1943, 1944, and 1945

Space does not permit a complete recital of proposals and testimony on all the hearings held to amend provisions of the marketing orders. There were some significant changes resulting from hearings held in 1943, 1944, and 1945. The provisions with respect to new producers were suspended on January 1, 1943. As a result of further consideration of services performed by cooperative associations in a hearing on August 25, 1943, there was added a provision for payment to cooperative associations. Instead of the rates of 10 cents and 4 cents as proposed in the hearing of May 5 and 6, 1942 (see page 37) they were set at 3 cents for milk received at a plant operated by the association and  $\frac{1}{2}$  cent per hundredweight for the cooperative not operating a plant.

An increase in prices was granted by an amendment effective August 16, 1944. A special classification and price was established for milk made into butter for the delivery periods of June and July 1945 by an amendment issued June 15, 1945.

### Cincinnati Hearings in 1946

Because of the many changes in 1946 connected in part with the repeal of wartime price controls and subsidies, the hearings of 1946 have special significance.

A hearing requesting an increase in producer prices was held on June 5 and the order was amended so as to increase the prices of Class I and II milk 40 cents per hundred pounds, effective July 1.

The prices established by this amendment were soon lower than that being paid in the surrounding markets that were tied to condensery prices. An emergency hearing was held on July 18 asking for a Class I price of \$5.00 and a Class II price of \$4.55 for milk of 4 percent butterfat.

Anticipating the possibility that a decision on the proposed change of price might be delayed and considering the fact that farmers were being deprived of any subsidies from July 1 on, the producer associations and handlers worked out an interim agreement to become effective as of Saturday, July 20, 1946.

The details of this arrangement can best be gotten from the letter and authorization form used. Below is a copy of a letter which was sent by registered mail, return receipt requested, to each of the 39 handlers in the market, accompanied by an authorization statement which is also reproduced below.

#### LETTER TO HANDLERS

Avondale Dairy Company  
36 Clinton Springs Avenue  
Cincinnati 17, Ohio

Gentlemen:

Enclosed herewith you will find authorization directed to the Market Administrator, Fred W. Issler, authorizing him to make collection of a premium of 80c per hundredweight on milk of 4.0% butterfat content above the present Class I and II prices, which will increase the Class I price to \$5.00 per hundredweight for milk of 4.0% butterfat content and the Class II price to \$4.55 per hundredweight for milk of 4.0% butterfat content.

We feel that perhaps the most efficient and effective way to have these authorizations properly endorsed by you and returned to the Market Administrator's office, is to mail you a copy for your signature, which we are doing herewith.

Further, the cooperative marketing associations operating in the Cincinnati market are announcing to you that the prices set out above namely, \$5.00 per hundredweight for Class I milk of 4.0% butterfat content and \$4.55 per hundredweight for Class II milk of 4.0% butterfat content, and Class III milk to remain at its present formula pricing plan, will become effective as of Saturday, July 20, 1946.

If for any reason you feel unable or unwilling to meet these price demands notify the associations furnishing you your milk and they will at once make arrangements to handle it in some other way. If, however, these prices are agreeable to you, please sign the enclosed authorization and mail at once in the enclosed addressed envelope to the Market Administrator's office.

This matter is very important and must be attended to immediately.

Sincerely yours,

THE CINCINNATI SALES ASSOCIATION, INC.

Enc. 2

REGISTERED MAIL

RETURN RECEIPT REQUESTED

A. O. Bonnell, President

J. P. Osborne, Vice President & Attorney

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Attorney

## ATTACHED COPY OF AUTHORIZATION

TO: Fred W. Issler  
Milk Market Administrator  
Cincinnati Milk Marketing Area  
152 East Fourth St.,  
Cincinnati 2, Ohio

The undersigned hereby authorizes you to include in the regular billing submitted to us, a premium of eighty (80c) cents per cwt. for Class I milk above the present Order price of \$4.20 per cwt.; a premium of eighty (80c) cents for Class II milk above the present Order price of \$3.75 per cwt.

All premiums above the Order prices are to become effective as of July ....., 1946, and effective until Order No. 65 of the United States Department of Agriculture is amended. You are further authorized to blend such premiums with premiums of other handlers who have signed a similar authorization before making payments to producers.

In event the United States Government shall re-establish the O.P.A. for milk, fix ceiling prices, or establish subsidies to be paid to the producers, then these premiums shall become ineffective.

Signed this ..... day of July, 1946.

Handler \_\_\_\_\_

By \_\_\_\_\_

An amendment was approved by the Secretary of Agriculture effective as of September 1, 1946 putting into effect the prices established under the plan described above. Because of further sharp movements in prices in other markets another hearing was held on October 18. As a result, a new price schedule was set up providing that Class I milk should be priced \$1.15 above the price of Class III as provided in the order unless this price should be below the floor established and that Class II should be 70 cents over Class III with the same proviso.

However, between October 18 and the time that the order was amended, it became necessary again for The Cincinnati Sales Association to establish a price for milk by means of premiums above the established order prices, and following the same method as that employed in July, 1946, the Cincinnati Sales Association notified all handlers that on October 19, 1946, the price for milk sold to handlers by The Cincinnati Sales Association in this market would be a price that would result in a blend price equivalent or comparable to that paid by handlers in the Dayton, Ohio, market.



### Changes in Toledo Order Resulting from Hearing of September, 1946

Toledo like Cincinnati had a series of hearings during the years 1940-1945. Space will permit only a brief summary of changes resulting from the hearing of September 5, 6, 16, and 17, 1946. The significant new provisions as summarized in the "Market Administrator's Bulletin" for May 1947 are: (1) Broadening of the previous basic formula for establishment of class prices by adding two new formulas, one based on the market prices of cheese and butter and the other on the prices paid farmers by a list of selected condenseries. (2) Intensification of seasonal pricing by changing the Class I differential over the basic formula price to 75 cents for May and June, \$1.05, for September through December, and 95 cents for the remaining months. This is a change from 80 cents for April, May, and June, and 90 cents for the remaining 9 months of the year. (3) A change in the method of classifying Class II and Class III milk, so that all classes will have skim milk and butterfat classified separately. (4) A revision in the allocation of "other source" milk which limits the quantity that may be deducted prorata from the over-all classification of milk. (5) Reclassification of plain and creamed buttermilk as Class I milk. (6) Clarification of shrinkage provisions to provide for the prorating of shrinkage between producer milk and "other source" milk, and reduction of shrinkage allowance on producer milk in Class III from 3 to 2 percent.

### THE MARKET ADMINISTRATOR

The market administrator is the executive responsible for the operation of the local office of the market or markets. He is employed as an agent of the Secretary of Agriculture. The funds to pay his salary and the operating expenses of the local office come from an assessment on each handler of 2 cents per hundredweight of milk purchased from producers or produced by him. This assessment may not exceed 2 cents per hundredweight and in both Cincinnati and Toledo orders it has been 2 cents throughout.

#### Auditing

The duty which requires the greatest amount of work on the part of the market administrator's office is set forth in the order thus: **Promptly verify the information contained in the reports submitted by handlers.**

The requirements of an adequate handler audit are concisely stated in a "Draft of Instructions to Market Administrators" as follows:

**Audits; handler**

Proper administration of an order requires and this office directs, the market administrator to perform audits of all handler's purchases and sales for each delivery period. The audit for any delivery period should be completed not later than ninety days following the end of such delivery period.

As a minimum requirement for adequate audit performance the following schedules should be included in your audit

- (a) **Schedule showing:** reconciliation of receipts with sales and utilization in terms of pounds of produce and pounds of butterfat.
- (b) **Schedule showing:**
  - 1. Receipts from producers
  - 2. Own production
  - 3. Receipts from other handlers
  - 4. Receipts of emergency milk or cream
  - 5. Receipts from other sources
  - 6. Inventories
  - 7. Sales by classes
  - 8. Reconciliation of by-products manufactured
  - 9. Computation of shrinkage
  - 10. Comparison of the sales values per audit with postings to the sales account in the general ledger.

All market administrators are directed to send to us as of March 31, June 30, September 30, and December 31, not later than ten days following the above dates, a report showing (1) the number of handlers who come under the terms of the order, (2) the name and address of each handler whose purchases and sales have been audited during the quarter, together with the period of time covered by the audit, (3) the name of each handler whose purchases and sales were not audited during the quarter but whose purchases and sales have been audited for some previous quarter. If audits are more than 90 days delinquent or if none have been performed, the reason therefore should be stated."

**Marketing Services**

In both Cincinnati and Toledo, producer associations qualified under the provisions of the "Capper-Volstead Act" are allowed deductions from total returns for milk for the purpose of providing market information to, and for the verification of weights, samples, and tests of milk of producers who are members. In order to provide these same services on a comparable basis for producers when they are not being performed by a cooperative association, the market administrator is required to deduct an amount not exceeding 4 cents per hundredweight and from this fund to provide similar services.

In the Toledo market, the market administrator contracts with the Northwestern Cooperative Sales Association to do the testing of the milk of all non-members. In the Cincinnati market the market administrator employs a tester but also contracts with the Cincinnati Sales Association for the testing of some non-members' milk.

In addition to the provision for supervision of testing, the market administrator is obligated to furnish market information to the non-member. This has been done by the publication of a market administrator's bulletin. In the first years of the orders a bulletin was published for each market. With the expansion of federal order markets the plan was changed and at present a single bulletin is issued giving information on all the federal order markets operating in Ohio with the exception of Cleveland. This bulletin contains a complete report of the pooling operations and other timely information with respect to production and sales. There has been some objection on the part of cooperative leaders to the publication of this joint bulletin on the grounds that certain information regarding other markets may be misinterpreted by producers in any given market.

### Clearing House Function

One of the services rendered by the market administrator more or less informally is that of a clearing house for market problems. Producers, both organized and unorganized, handlers, public health authorities, and others have found the administrator's staff willing to work toward a sound solution of the problems arising in the market. In the Toledo market it has been the practice for several years for the handlers, the cooperative leaders, and the market administrator's staff to hold monthly dinners, each in turn serving as sponsor. From these dinners there has grown a much more cooperative attitude within the market than existed at the time the order was inaugurated.

## PRODUCER AND HANDLER EVALUATION OF GOVERNMENT CONTROL OF MILK MARKETS

This study was made with two objectives. One was to assemble historical facts concerning these markets under various forms of market control and to describe in some detail the methods of operation. The other was to obtain an evaluation from producer leaders and handlers as to the merits of these control programs.

It was to be expected that anyone who was involved as an operator under market control would be reluctant to be quoted directly. These men would not wish to be on record in a publication with a position which might at some future time be put in the record of a hearing when they no longer held that opinion. It was the writer's good fortune to be able to talk to many leaders in their respective fields on a friendly and confidential basis. Under these conditions both criticism and constructive suggestions were received.

It is important to recall here that while both markets had an almost

parallel record under State control they differed sharply thereafter. In the Cincinnati market, the Cincinnati Sales Association kept the pooling machinery that had existed under the Burk Act in operation. In Toledo, classification of milk was under control of the distributors. At the end of the period of industry control in the Cincinnati market the three cooperative producer associations and a majority of the distributors approved operation under a Federal marketing agreement. In the Toledo market the Northwestern Cooperative Sales Association alone made application for a Federal hearing while the Toledo Fluid Milk Producers Association and the Toledo Milk Distributors' Association both opposed. Because of these background differences the opinions will be presented for the two markets separately.

### Opinions in Cincinnati Market

Both producer representatives and handlers were willing to make frank statements as to the relative merits of Federal as compared with State control. There was some definite opinion among the handlers that there was a stabilizing effect upon the market in the resale price control of the Burk Act that was lacking in the Federal control which regulates producer prices only.

The point on which there was the most pronounced dealer disagreement with procedure was with respect to the hearing. They maintained in many instances that the Department of Agriculture representatives and the producer representatives were in a sense conducting a court case in which the handlers were the defendant and the producers and the Department of Agriculture were the plaintiff. They objected strenuously to this procedure.

There was general agreement on the part of both handler and producer opinion with respect to the type of market administration. Under the Burk act the market was administered by a Control Committee responsible to the Ohio Milk Marketing Commission and under the Agricultural Marketing Agreement Act of 1937 by a Market Administrator responsible to the Secretary of Agriculture. Both handlers and producer representatives considered the operation under a market administrator to have distinct advantages. The following appraisal of the two methods was made by one of the cooperative leaders:

"Under the Control Committee, which was the type of control set up under the (so-called) Burk (Milk Control) Act for Ohio, representatives from the industry were chosen. In Cincinnati there was one representative from each of the three cooperative marketing associations. These three representatives chose another, or a fourth milk producer who was an independent producer, to represent the producers on the Control Board. The milk dealers in the city of Cincinnati chose an equal number, or four representatives from their group, and these four, with a secretary

constituted the Control Board, whose duty it was to make determinations in all matters that had to do with the handling of milk in the Cincinnati market.

The duties of the Control Board extended into the field of establishing resale prices as well as producer prices. If any difficulties or differences arose within the body itself which they were unable to compose among themselves, they could and often did ask that they be heard by the State Milk Marketing Commission, thus having a very definite way or manner in which differences could be adjudicated.

In making an analogy between the operations under the Control Committee and that under the market administrator, we might say that the market administrator's office is set up by the Department of Agriculture in Washington. They choose and send into the market a market administrator whose duties are in some ways comparable to those of the secretary under the Control Board but who does not have an industry board to guide or direct him or to whom he is responsible. The duties of the market administrator are to act as an executive officer in enforcing the terms of the marketing order provided for the market, the terms of this order having been arrived at through public hearings at which both producers and distributors and all others interested in the milk market could be and were heard.

After the Federal Order had been written and signed by the U. S. Secretary of Agriculture it then had somewhat the effect of law and was administered by an executive officer known as a Market Administrator, whereas under the Control Committee, it was an agreement entered into, usually by producers and distributors setting out a set of rules and regulations which were to govern the market, and, of course, the enforcement of these rules and regulations was in the hands of the Control Committee and the secretary of the Control Committee.

Under the Market Administrator we have a money pool; under the Control Board we had a paper pool with an equalization fund. My observations on the workings of the two methods would be that the program under the Market Administrator is a more effective and better worked out program than we had under the Burk Bill, probably because of the experience and knowledge we had gained in operating the Burk Bill. In setting up the Federal marketing order we tried to correct what we thought were inequities, injustices, and errors in the method employed under the Burk Bill, and during the past 8 years that we have been operating under a Federal marketing order we have from time to time amended it with the belief, of course, when we did so, that we were improving it.

However, under a Federal Milk Marketing Order it takes considerable time and effort to have changes in prices and other conditions remedied because of the long and tedious method of hearings and signatures to be obtained in Washington, whereas under the Control Committee, if the representatives of both sides of the industry could agree upon changes among themselves, their agreements could be taken to Columbus and presented to the State Control Board or milk marketing board, and if it met their approval it could become effective at once, thus making it possible to secure changes much more quickly under the Control Board plan than is possible under the Market Administrator plan. However, under the Control Committee plan the enforcement of many of the provisions of the agreements was very difficult. The State courts being largely influenced by politics and always influenced by ignorance of the real question involved, it was very difficult to get any of these agreements enforced in court. On the other hand, the Federal Government, through a process of education and by a determination on their part, has been able to enforce the marketing orders and agreements established by them so far as I know almost 100 percent throughout the country."

The point on which there was as much difference of opinion as any was the procedure of producer referendum. Many distributors took the position that if cooperative associations were permitted to vote their entire membership in one block that the referendum was not truly representative and that those who were in opposition to it would not bother to come out and vote one way or the other. There was another point of criticism in regard to the referendum in the case of the Cincinnati market where there are three cooperative associations. One of the leaders in that market had this comment to make with regard to producer referendum: "The producer referendum has its advantages and its weaknesses. If there is more than one cooperative marketing association operating in a market and they differ as to their objectives, it is possible that one of them may have sufficient votes to defeat a Federal Milk Marketing Order under the present referendum program. That is just what happened in Cincinnati late in 1941 and early in 1942. However, since this program is for the benefit of producers and should be with their knowledge and consent, I believe the referendum feature should be retained."

There was some difference of opinion as to the advisability of operating several markets under a single market administrator. Some of the leaders in the Cincinnati market have questioned the soundness of this plan. One of the results of the plan has been the publication of a market administrator's bulletin that gives in one place the price and volume statistics of all markets. This has brought criticism from some cooperative leaders.

In the matter of pricing policy the Cincinnati market has continued to arrive at prices for Class I and II milk without the use of formulas. In the most recent hearings there has been some testimony favoring a modified use of formula pricing.

#### Opinions in Toledo Market

As in Cincinnati, there was no unanimous opinion as to the merits of governmental control. There was, however, enthusiastic approval in general on the part of producers and an almost complete absence of the antagonistic attitude on the part of handlers as expressed in the brief of their Association previously quoted.

There was general agreement on the part of the handlers interviewed that there had been established under the operation of the Order a degree of market stabilization which had not existed in the period of industry control in effect between the expiration of the Burk law and the introduction of the Federal Order.

Everyone interviewed spoke in praise of the market administrator and his staff. They also pointed out that due in large part to the effort of

the market administrator's office there had developed a mutual understanding and goodwill among handlers, producers, labor, and the market administrator.

The parts of the market order on which there was specific objection on the part of one or more of the handlers were classification, pricing policy, and producer referendum. There was objection on the part of handlers to the classification of flavored milk drinks and creamed buttermilk in Class I.

The plan of attaching the order prices to those of nearby evaporating plants was questioned by some handlers. They held that it had resulted in prompt change of producer price with the recent rising markets but questioned whether it would work as well in the event of a period of sharply falling prices in the manufacturing area.

The objections to the provisions covering producer referendums were about the same as those voiced in the Cincinnati market. It was felt that with the large percentage of producers in a single cooperative association there would be little likelihood that any significant number of producers would go to the trouble of casting individual ballots.

No reference was made during these interviews to the added cost of marketing represented in the deductions made for carrying the work of the market administrator's office. It is probably safe to assume that handlers consider the saving to them from the elimination of discounts and other uneconomic trade practices as overbalancing this item.

### SUMMARY AND CONCLUSIONS

This study had two objectives: (1) To trace the evolution of State and Federal economic controls of milk marketing in two Ohio markets and to show the effect of these controls on marketing practices, and (2) to record the opinions of some experienced leaders in the field of milk marketing as they were given in form of testimony in public hearings and in interviews with the writer.

These two markets were chosen because of somewhat parallel records with respect to both State and Federal controls. Local conditions, however, were in sharp contrast in many respects.

Cooperative organization of producers and of distributors began in the Cincinnati area around 1910. In the Toledo area, producers organized in 1920 and distributors in 1933. In Cincinnati a large producer cooperative engaged in processing and distribution; in Toledo there has been collective bargaining only.

The Ohio Burk Law was in effect from July 1, 1933 to July 1, 1935. It

was designed to safeguard the consuming public and the milk industry from practices which threatened its economic integrity. Both markets operated under orders issued by the Ohio Milk Marketing Commission. In Cincinnati there was some significant litigation over provisions of the order. Both producers and distributors saw some benefit in State control; the producers in its effect upon their prices and distributors in its stabilizing of resale prices at the wholesale level.

Federal economic controls in the marketing of Agricultural commodities was inaugurated by the Agricultural Adjustment Act of 1933 and made more specific with respect to milk in the Agricultural Marketing Agreement Act of 1937.

There was an interim period of about 2 years between the expiration of the Burk Act and the passage of the Marketing Agreement Act of 1937. During this period Cincinnati maintained a pool of dealers purchasing through the Cincinnati Sales Association, a producers' cooperative association. In Toledo there was no provision for auditing of market receipts but dealers paid for milk on a use classification basis.

Both markets made applications for hearings under the Agricultural Marketing Agreement Act. Cincinnati started off as an agreement but later changed to an order. With the exception of a few months in 1942 when the Cincinnati order was suspended, both markets have operated under Federal orders since 1938.

The two markets have differed in pricing procedure. From the beginning, Toledo had its price of Class I and Class II milk based on the prices paid by condenseries in the nearby territory. Cincinnati negotiated Class I and Class II prices in hearings on the basis of evidence presented but did not tie them to manufacturing prices. The Cincinnati market moved to a partial use of formula prices in the latter part of 1946.

The Market Administrator under the Federal order has the responsibility of putting into effect the provisions of the order. He also renders certain marketing services to producers who are not members of cooperative associations and his office has become a sort of clearing house for market problems.

In the evaluation of economic control, there is some difference of opinion between producers and handlers. Producers generally regard the Federal plan with the market administrator as more effective than the plan under State control with emphasis on local committees. Most handlers give the Federal orders credit for a stabilizing effect but they are critical of some of the hearing procedures.

A careful study of the Federal act and the hearing records reveals that these economic controls are, in the main, concerned with market adminis-



tration. They provide a means by which producer prices may be established and they define the classifications in which milk and its products are to be handled. They do not, however, guarantee a market to the producer nor assure him that he will be paid for his milk once it is delivered. These are responsibilities left to the cooperative associations or to other legislation.

In these markets the position of the dealer or handler, as designated in the Act, has not been changed except that he is required to conform to the pattern of prices to be paid producers and must submit his records of receipts and uses to the market administration for audit. He still has entire control of the purchase and sale of his product. Neither has the position of the producer cooperative association been materially affected. Before the introduction of economic controls the association was sometimes given the responsibility of auditing the records of cooperating dealers. The chief responsibility, that of finding a market for the milk of its members still rests with the association as well as the maintenance of sound member and handler relationships.

The most significant changes in marketing practices that have come about, in part at least, as a result of economic controls are:

1. The establishment of prices to be paid producers has become a matter of public hearing at which anybody concerned may testify.
2. Use classifications of milk within the various handlers in the market have been standardized.
3. Complete and accurate audits have been made of the receipts and uses of milk in the markets.
4. A clear cut understanding as to the division of responsibilities among the agencies in the market has been reached.
5. The office of the market administration came to be a clearing house for marketing problems and a meeting place of buyers and sellers.